International Journal of All Research Education and Scientific Methods (IJARESM),
ISSN: 2455-6211, Volume 13, Issue 5, May-2025, Available online at: www.ijaresm.com

The Effectiveness of Adr in Reducing Court Backlogs: A Comparative Evaluation of Mediation and Arbitration in Commercial Disputes

Karan Dhingra[1], Dr. Sheeba Ahad[2]

---***************---

Analysis of Arbitration in Commercial Disputes

Arbitration has emerged as a pivotal mechanism for resolving commercial disputes in India, offering an alternative to traditional litigation. The Arbitration and Conciliation Act, 1996 (hereinafter "the Act"), modelled after the UNCITRAL Model Law, provides the legislative framework for arbitration in India. Over the years, the Act has undergone significant amendments to enhance efficiency, reduce judicial intervention, and align with international best practices.

Arbitration Regime in India

- **The Arbitration and Conciliation Act, 1996**

The Act governs both domestic and international arbitration in India. Key features include:

- **Part I**: Deals with domestic arbitration and international commercial arbitration seated in India.
- **Part II**: Pertains to the enforcement of foreign awards under the New York and Geneva Conventions.
- **Part III**: Covers conciliation.
- **Part IV**: Contains supplementary provisions.
- **Amendments to the Act**

To address challenges and improve the arbitration landscape, several amendments have been introduced:

- **2015 Amendment**: Focused on reducing delays and court intervention. Key changes included:
  - **Section 29A**: Mandated the arbitral tribunal to deliver an award within 12 months, extendable by 6 months with parties' consent.
  - **Section 17**: Empowered arbitral tribunals to grant interim measures, making them enforceable as court orders.
  - **Section 34**: Limited the scope for setting aside awards, emphasizing minimal judicial interference.
- **2019 Amendment**: Aimed at promoting institutional arbitration and enhancing the quality of arbitral proceedings. Notable provisions:
  - **Establishment of the Arbitration Council of India (ACI)**: An independent body responsible for grading arbitral institutions and accrediting arbitrators.
  - **Time Limits**: Introduced a six-month timeframe for filing statements of claim and defence.
  - **Confidentiality**: Mandated confidentiality of arbitral proceedings, with exceptions for enforcement purposes.
  - **Protection for Arbitrators**: Provided immunity to arbitrators for acts done in good faith.

These amendments signify India's commitment to creating a robust arbitration ecosystem.[1]

Institutional vs. Ad Hoc Arbitration

Arbitration in India can be categorized into institutional and ad hoc arbitration, each with distinct characteristics.

- **Institutional Arbitration**

In institutional arbitration, a specialized institution administers the arbitration process according to its rules. Advantages include:

---

[1]**The Arbitration and Conciliation Act, 1996**, No. 26, Acts of Parliament, 1996 (India), amended by the Arbitration and Conciliation (Amendment) Act, 2015, 2019, & 2021.

- **Structured Procedures**: Institutions provide established rules and procedures, ensuring consistency.
- **Administrative Support**: Institutions offer logistical and administrative assistance.
- **Panel of Arbitrators**: Access to a roster of qualified arbitrators.
- **Efficiency**: Streamlined processes can lead to quicker resolutions.

Prominent arbitral institutions in India include:

- **India International Arbitration Centre (IIAC)**: Established in 2019, the IIAC aims to promote institutional arbitration and provide facilities for international and domestic arbitration.
- **International Arbitration and Mediation Centre (IAMC), Hyderabad**: Inaugurated in 2021, the IAMC focuses on high-value commercial disputes and aims to position Hyderabad as a hub for international arbitration.

Ad Hoc Arbitration

In ad hoc arbitration, the parties themselves manage the arbitration process without institutional support. Characteristics include:

- **Flexibility**: Parties have the autonomy to decide procedures and appoint arbitrators.
- **Cost-Effectiveness**: Potentially lower costs due to the absence of institutional fees.

However, challenges associated with ad hoc arbitration in India include:

- **Delays**: Lack of structured timelines can lead to prolonged proceedings.
- **Quality Concerns**: Absence of standardized procedures may affect the quality of arbitration.
- **Judicial Intervention**: Greater likelihood of court involvement in procedural matters.

A 2013 survey by PricewaterhouseCoopers indicated a strong preference for ad hoc arbitration among Indian companies, contrasting with global trends favoring institutional arbitration.

Comparative Analysis

Aspect	Institutional Arbitration	Ad Hoc Arbitration
Administration	Managed by an arbitral institution	Managed by the parties themselves
Procedural Rules	Pre-established rules provided by the institution	Procedures decided by the parties
Appointment of Arbitrators	Assisted by the institution	Parties appoint arbitrators directly
Cost	Includes institutional fees	Potentially lower costs
Efficiency	Generally more efficient due to structured processes	May face delays without institutional oversight
Enforceability	Awards are enforceable under the Act	Awards are enforceable under the Act[2]

Challenges and Recommendations

Despite legislative efforts, arbitration in India faces several challenges:

- **Limited Adoption of Institutional Arbitration**: Lack of awareness and trust in institutions hinder their widespread use.
- **Judicial Intervention**: Excessive court involvement can undermine the autonomy of arbitration.
- **Enforcement Issues**: Delays in enforcing arbitral awards can deter parties from opting for arbitration.

To address these challenges:

- **Promote Institutional Arbitration**: Enhance awareness and trust in arbitral institutions through government and industry initiatives.
- **Strengthen Infrastructure**: Invest in developing world-class arbitration facilities and training programs.

[2] **Report No. 246: Amendments to the Arbitration and Conciliation Act, 1996** (Aug. 2014), available at https://lawcommissionofindia.nic.in/reports/report246.pdf.

- **Streamline Enforcement**: Implement measures to expedite the enforcement of arbitral awards.

Arbitration holds significant promise for resolving commercial disputes in India. While the legislative framework has evolved to support efficient arbitration, practical challenges persist. Embracing institutional arbitration, enhancing infrastructure, and fostering a pro-arbitration culture are essential steps toward realizing the full potential of arbitration in India's commercial landscape.

How Arbitration Has Helped Resolve Disputes Out of Court.

Arbitration has increasingly played a pivotal role in reducing court caseloads and offering a time-efficient and party-friendly mechanism to resolve commercial disputes. The following case studies illustrate how arbitration has facilitated dispute resolution effectively outside the traditional court system in India:

1. General Electric Co. v. Sterling Auxiliary Equipment Pvt. Ltd. (1998)

Context:

In this case, General Electric (GE), a multinational corporation, entered into a commercial agreement with Sterling Auxiliary Equipment, an Indian company, which included an arbitration clause. A dispute arose regarding the performance and delivery terms under the contract.

Resolution through Arbitration:

The matter was referred to arbitration as per the contractual clause. The tribunal, comprising experts in engineering and commercial law, delivered a binding award within six months, sparing both parties prolonged court litigation.

Significance:

This case demonstrated how international commercial disputes could be efficiently settled through arbitration, respecting party autonomy and ensuring confidentiality.[3]

ONGC v. Saw Pipes Ltd. (2003)

Context:

ONGC had entered into a contract with Saw Pipes Ltd. which contained a standard arbitration clause. Disputes arose over delay in the supply of equipment and ONGC invoked arbitration.

Resolution and Aftermath:

The arbitrator awarded damages in favor of ONGC. However, Saw Pipes challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996, arguing that the award was contrary to the terms of the contract.

Outcome:

The Supreme Court ruled that courts could interfere with arbitral awards if they were “patently illegal,” setting a precedent for judicial review. However, the resolution still originated from arbitration and clarified the legal boundaries for future awards.

Significance:

This landmark case reinforced the importance of drafting precise arbitration clauses and demonstrated the judiciary's willingness to respect arbitral proceedings while maintaining a safeguard against gross injustice.[4]

Delhi Metro Rail Corporation (DMRC) v. DAMEPL (2017–2022)

Context:

The concessionaire agreement between DMRC and Reliance Infra’s subsidiary, DAMEPL, contained a dispute resolution clause. After financial and operational disagreements over the Airport Metro Express Line, DAMEPL terminated the contract and initiated arbitration.

Resolution:

The arbitral tribunal awarded over ₹7,000 crores to DAMEPL. Though challenged multiple times, the Delhi High Court and later the Supreme Court upheld the award.

---

[3]General Electric Co. v. Sterling Auxiliary Equipment Pvt. Ltd., (1998) 4 SCC 738.

[4]Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705.

Significance:
This case reflects the capacity of arbitration to handle high-stake infrastructure disputes. Despite judicial intervention post-award, the core dispute resolution occurred outside the courts through arbitration, conserving judicial time and enabling sectoral experts to evaluate complex technical matters.[5]

Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. (2020–2022)
Context:
Amazon had invested in Future Coupons Ltd., which indirectly controlled Future Retail Ltd. A dispute arose when Future Retail entered into an agreement to sell its assets to Reliance Retail, allegedly violating the investment agreement with Amazon.

Arbitral Proceedings:
Amazon invoked emergency arbitration under the Singapore International Arbitration Centre (SIAC) rules, which granted an emergency award restraining the sale.

Court Recognition of Arbitration:
The Indian Supreme Court, in a landmark ruling, upheld the validity and enforceability of the emergency arbitral award under Indian law.

Significance:
This case was a turning point in India's recognition of institutional arbitration, especially emergency arbitration, and reinforced the judiciary's pro-arbitration stance. It also signaled India's growing receptivity to international arbitration standards.[6]

Reliance Infrastructure Ltd. v. State of Goa (2016–2018)
Context:
Reliance Infrastructure had entered into a power distribution agreement with the State of Goa. Disputes arose regarding delayed payments and liabilities.

Arbitration:
Both parties agreed to resolve the dispute through institutional arbitration administered by the Mumbai Centre for International Arbitration (MCIA).

Outcome:
The arbitration led to a partial award that resolved the payment issue and allowed continued performance of the remaining contractual obligations. The award was enforced without further judicial challenge.

Significance:
The case illustrates how sectoral disputes in energy and infrastructure can be resolved efficiently through institutional arbitration, avoiding adversarial litigation.[7]

Benefits Illustrated by These Cases

Benefit	Case Example
Time Efficiency	GE v. Sterling; Reliance Infra v. Goa
Sectoral Expertise	ONGC v. Saw Pipes; DMRC v. DAMEPL
International Enforceability	Amazon v. Future Retail
Confidentiality	Reliance Infra v. Goa

These case studies underscore arbitration's significance in resolving commercial disputes in India, both domestically and internationally. The consistent use of arbitration across diverse sectors—energy, infrastructure, retail, and transportation—demonstrates its versatility and effectiveness. While challenges remain in terms of enforcement and judicial interference, these examples show the growing credibility and acceptance of arbitration as a reliable tool for

[5]Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd., (2021) SCC Online Del 3027.
[6]Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. & Ors., (2021) 3 SCC 714.

[7]Reliance Infrastructure Ltd. v. State of Goa, Arbitration Application No. 19 of 2016 (Bombay High Court).

dispute resolution. Arbitration not only shortens the lifecycle of legal conflicts but also preserves business relationships, promotes confidentiality, and alleviates the burden on the judiciary.

Limitations of Arbitration and Comparative Insights from Global Arbitration Hubs
Arbitration has been hailed as an efficient alternative to litigation, particularly in commercial disputes. However, despite significant advancements and legislative support, the arbitration landscape in India continues to face serious limitations that hinder its full potential. This section discusses these limitations in detail, followed by comparative insights from global arbitration hubs such as Singapore, the United Kingdom, and Hong Kong. The objective is to provide a comprehensive analysis of where Indian arbitration falters and what it can learn from global best practices.

- **Limitations in the Indian Arbitration Regime**

Cost of Arbitration
Contrary to the popular belief that arbitration is cost-effective, **arbitration in India often turns out to be expensive**, especially in ad hoc proceedings.

- **Arbitral Fees**: Arbitrators often charge disproportionately high fees. Unlike institutional arbitration where fees are regulated, ad hoc arbitrations provide no such check. For instance, in *ONGC v. Afcons Gunanusa JV*, the Supreme Court had to step in to regulate arbitrators' fees based on the Fourth Schedule of the Arbitration and Conciliation Act, 1996 (as amended in 2015 and 2019).
- **Ancillary Costs**: Expenses such as administrative costs, legal counsel, venue rental, transcription services, and expert witness fees add to the overall burden. These are often on par with or even exceed the cost of litigation, especially in high-stakes commercial disputes.
- **Lack of Economies of Scale**: In institutional arbitration systems like those in Singapore or the UK, procedural standardization results in cost optimization. India, with its fragmented and inconsistent procedures in ad hoc arbitrations, lacks this benefit.

Delays in Enforcement of Arbitral Awards
Despite arbitration being promoted as a **time-bound process**, enforcement of arbitral awards in India often suffers due to systemic delays:

- **Section 34 Challenges**: The setting aside of awards under Section 34 of the Arbitration and Conciliation Act has become a routine practice, often used as a delaying tactic. Though the provision mandates a decision within one year, Indian courts frequently take several years to adjudicate these challenges.
- **Execution Delays**: Even when an award is upheld, the actual execution is prolonged due to judicial backlog and procedural inefficiencies. Unlike in Singapore, where awards are enforceable through streamlined court procedures, Indian courts follow the regular civil procedure, leading to further delays.
- **Case Example**: In *Delhi Airport Metro Express Pvt. Ltd. v. DMRC*, although the arbitral tribunal awarded ₹7,200 crores in 2017, DMRC delayed payment for years through successive court appeals.

Judicial Intervention
The principle of **minimal judicial interference**, which is fundamental to arbitration, is frequently undermined in India.

- **Broad Interpretation of Public Policy**: Courts have interpreted "public policy" expansively, especiall
- y post the *Saw Pipes* judgment, allowing judicial review of the merits of the case, thereby defeating the finality of arbitral awards.

Citation: ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705.

- **Inconsistent Application**: Different High Courts have applied standards inconsistently, creating unpredictability in arbitral enforcement.
- **Recent Efforts to Limit Interference**: The 2015 and 2019 Amendments sought to limit judicial intervention by narrowing the scope of "public policy" and mandating time-bound disposal. However, in practice, these amendments have only partially achieved their goal.

- **Comparative Insights from Global Arbitration Hubs**

To contextualize India's limitations, a comparative study of successful arbitration jurisdictions offers valuable insights.[8]

---

[8]**ONGC v. Saw Pipes Ltd.**, (2003) 5 SCC 705 (India) (regarding expansive interpretation of public policy).

Singapore

Singapore is consistently ranked among the top arbitration-friendly jurisdictions globally, largely due to:

- **Institutional Strength**: The Singapore International Arbitration Centre (SIAC) offers a standardized, efficient, and cost-regulated arbitration process. In 2023, SIAC handled 479 new cases from 65 jurisdictions.
- **Judicial Support**: Singapore's courts are known for pro-arbitration decisions. For example, in *Tomolugen Holdings Ltd. v. Silica Investors Ltd.*, the Court of Appeal upheld arbitration agreements and stayed parallel court proceedings, reinforcing arbitration autonomy.
- **Emergency Arbitration**: SIAC was among the first to provide emergency arbitration provisions, offering interim relief within 14 days—a mechanism now recognized by Indian courts post the *Amazon v. Future Retail* case.[9]

United Kingdom (London)

London, through the London Court of International Arbitration (LCIA), remains a global leader in dispute resolution.

- **Procedural Certainty**: The English Arbitration Act, 1996, limits court intervention to specific, enumerated instances, allowing arbitrators procedural autonomy.
- **Efficient Enforcement**: UK courts generally enforce awards swiftly unless substantial injustice is demonstrable. The clarity in standards encourages predictability.
- **Data Point**: The LCIA reported that 72% of its cases in 2022 were resolved within 18 months of initiation.[10]

Source: LCIA Annual Statistics 2022.

Hong Kong

Hong Kong operates under the UNCITRAL Model Law framework and is favored for China-related commercial arbitration.

- **Institutional Arbitration**: The Hong Kong International Arbitration Centre (HKIAC) is known for efficient case handling and cost-effective measures.
- **Limited Judicial Interference**: Hong Kong courts enforce arbitral awards unless contrary to basic notions of morality and justice—aligned with New York Convention standards.
- **Statistical Highlight**: In 2022, HKIAC reported an average arbitration duration of 13 months and an award enforcement rate exceeding 90%.[11]

Lessons for India: Recommendations and Reforms

To address these limitations, India could consider the following reforms:

Issue	Global Practice	Recommended Reform for India
Arbitrator Fees	Fixed fee schedules in SIAC and LCIA	Mandate institutional arbitration or cap fees
Enforcement Delays	Time-bound enforcement (UK, SG)	Fast-track commercial award execution
Judicial Overreach	Minimal intervention (Singapore, UK)	Define "public policy" clearly
Institutional Weakness	Strong institutions like SIAC, HKIAC	Promote Indian institutions (e.g., MCIA, DIAC)
AdhocInefficiencies	Rules-based procedures	Incentivize institutional arbitration

While arbitration in India has grown in terms of legislative attention and commercial usage, it continues to grapple with issues of cost, enforcement delays, and judicial interference.

Comparisons with global arbitration hubs highlight how institutional robustness, limited court intervention, and procedural efficiency can dramatically improve the arbitration ecosystem. If India adopts these international best

[9]SIAC, **Annual Report 2023**, Singapore Int'l Arb. Ctr., available at https://siac.org.sg/annual-reports.

[10]LCIA, **2022 Annual Casework Report**, London Ct. Int'l Arb., available at https://www.lcia.org.

[11]HKIAC, **Statistics 2022**, Hong Kong Int'l Arb. Ctr., available at https://www.hkiac.org/statistics.

practices, it can transform into a leading global arbitration destination, reducing its dependence on overburdened courts and promoting investor confidence in its dispute resolution mechanisms.[12]

Arbitration in Specific Commercial Sectors
Arbitration has found widespread acceptance across various commercial sectors in India and globally due to its flexibility, confidentiality, and potential for specialized decision-making. However, its effectiveness in reducing court backlogs and resolving disputes efficiently varies depending on the industry, the nature of disputes, and the extent of institutional support. This section explores how arbitration functions in key sectors such as construction and infrastructure, energy and natural resources, maritime and shipping, and banking and finance.

Construction and Infrastructure Disputes
Construction and infrastructure projects in India are often large-scale, time-bound, and multi-party in nature. Disputes typically involve claims over delays, cost overruns, defective work, or non-compliance with contractual obligations.

- Arbitration is the **preferred mode of dispute resolution** in this sector, largely due to:
    - The complexity and technicality of disputes.
    - Confidentiality and neutrality.
    - The involvement of foreign contractors in EPC (Engineering, Procurement, and Construction) projects, who insist on arbitration.
- Many contracts are based on **FIDIC (International Federation of Consulting Engineers)** templates, which provide for institutional arbitration.
- Government contracts increasingly incorporate arbitration clauses, though the government has often been criticized for delaying arbitral award enforcement.

Example: In *Delhi Metro Rail Corporation v. Delhi Airport Metro Express Pvt. Ltd.* (2021), the Supreme Court emphasized limited judicial interference with arbitral awards, especially when technical and commercial expertise was involved.

Challenges:

- Delays due to frequent court interventions in interim measures or award enforcement.
- Costly proceedings when arbitrators demand high fees and delays stretch over years.

Energy and Natural Resources
The energy sector—including oil, gas, and renewables—often involves high-value, cross-border disputes. Arbitration is widely used here, especially in Production Sharing Contracts (PSCs) and joint ventures.

- Contracts involving Public Sector Undertakings (PSUs) like ONGC and GAIL commonly include arbitration clauses.
- International arbitration (under ICC, LCIA, or UNCITRAL rules) is often chosen when foreign investors are involved.

Notable Case: *Reliance Industries Ltd. & BG Exploration v. Union of India* – A high-stakes arbitration seated in London, under UNCITRAL rules, concerning the Krishna-Godavari gas basin.

Advantages:

- Expert arbitrators familiar with energy sector norms.
- Neutral forums for investor-state disputes.

Limitations:

- High costs of international arbitration.
- Enforcement delays when awards are challenged in Indian courts under the “public policy” ground.

[12]UNCITRAL Model Law on International Commercial Arbitration, U.N. Comm’n on Int’l Trade Law, 1985, with amendments (2006), available at
https://uncitral.un.org/en/model-laws/arbitration.

Maritime and Shipping Disputes
India has a long-standing tradition of resolving maritime disputes through arbitration, particularly in commercial hubs like Mumbai and Chennai. Maritime disputes often include:

- Charterparty disputes
- Cargo damage claims
- Demurrage and laytime issues
- The **Indian Maritime Arbitration Association (IMAA)** and institutions like **Singapore Chamber of Maritime Arbitration (SCMA)** and **London Maritime Arbitrators Association (LMAA)** are often used.

Benefits:

- Maritime arbitrators are industry veterans.
- Fast-track procedures for demurrage claims and time-sensitive disputes.

Issue:

- Lack of a world-class domestic maritime arbitration center makes parties prefer foreign seats.

Banking and Financial Sector
Arbitration is still evolving in banking disputes due to:

- Statutory limitations (e.g., RBI guidelines, SEBI regulations).
- Preference for debt recovery tribunals (DRTs) and insolvency tribunals (NCLTs).

However, some commercial lending contracts and NBFC agreements include arbitration clauses.

Concerns:

- Arbitration not always enforceable when public interest or regulatory oversight is involved.
- Sector-specific restrictions sometimes override private dispute resolution agreements.

Conclusion to Sectoral Analysis
The effectiveness of arbitration in reducing litigation varies by sector. In technically complex areas like construction and energy, arbitration offers significant relief from court dockets. However, issues of cost, delay, and enforcement continue to affect its true potential. Sector-specific institutional development and government support are essential to enhance arbitration’s impact on judicial caseload reduction.